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No. 92-2032

In the Supreme Court of the United States

OCTOBER TERM, 1993

DAWN R. WIDDOSS, ETC., PETITIONER

v.

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly held that petitioner's motion for review of a decision of a special master in the National Vaccine Injury Compensation Program was untimely because she did not file the motion within the applicable 30-day filing period established by 42 U.S.C. 300aa-12(e)(1) (Supp. III 1991).

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 989 F.2d 1170. The opinion of the United States Claims Court (Pet. App. 36a-49a) is reported at 24 Cl. Ct. 547.[1]

[1] The United States Claims Court has been renamed the United States Court of Federal Claims. Court of Federal Claims Technical and Procedural Improvements Act of 1992, Pub. L. No. 102-572, Tit. IX, § 902(a), 106 Stat. 4516. For convenience, we refer to that court as the Claims Court, the name it bore at the time of the decision in this case.

JURISDICTION

The judgment of the court of appeals was entered on March 24, 1993, Pet. App. 34a, and a petition for rehearing was denied on April 30, 1993. Pet. App. 33a. The petition for a writ of certiorari was filed on June 22, 1993. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In 1986, Congress created the National Vaccine Injury Compensation Program. 42 U.S.C. 300aa-10 *et seq.* (1988 & Supp. III 1991) (Vaccine Act or Act). The Act establishes a compensation system for persons alleging injury from certain routine pediatric vaccines. Congress recognized the vital public interest in encouraging the availability and use of those vaccines. To further that interest, the Act offers an alternative to traditional tort actions against vaccine administrators and manufacturers. The Secretary of Health and Human Services is the named respondent in claims filed under the Act. The Act's no-fault system, its informal processing requirements, and its stringent time-frames for decision are designed to attract potential litigants by offering a faster and more certain compensation system than traditional tort litigation.

The Act creates an Office of Special Masters to adjudicate claims. 42 U.S.C. 300aa-12(c)(1) (Supp. III 1991). Special masters originally proposed findings to judges of the United States Claims Court, who in turn issued final decisions. Congress subsequently amended the Act to give the special masters decision-making authority. By statute, a special master's decision must be issued within 240 days of the date the petition is filed, excluding periods of suspension. 42 U.S.C. 300aa-12(d)(3)(A)(ii) (Supp. III 1991).

The Act also includes specific provisions governing appellate review. It provides that upon issuance of the special master's decision, the parties "shall have 30 days" to file a motion for review with the clerk of the Claims Court. 42 U.S.C. 300aa-12(e)(1) (Supp. III 1991). The operable section, entitled "Court jurisdiction," provides that "[u]pon the filing of a motion [for review]," the Claims Court "shall have jurisdiction to undertake a review of the record of the proceedings." 42 U.S.C. 300aa-12(e)(2) (Supp. III 1991). Vaccine Rule 23[2] reinforces this statutory directive, providing that "[n]o extensions of time under this rule will be permitted, and the failure of a party to timely file such a motion shall constitute a waiver of the right to obtain review." See Pet. App. 12a. In the absence of a motion for review, the statute mandates that "the clerk of the United States Claims Court shall immediately enter judgment in accordance with the special master's decision." 42 U.S.C. 300aa-12(e)(3) (Supp. III 1991). Congress intended these time-frames to ensure that all claims under the Act proceed swiftly and efficiently, and it anticipated appeal only "under very limited circumstances." H.R. Conf. Rep. No. 386, 101st Cong., 1st Sess. 516 (1989); see also H.R. Rep. No. 908, 99th Cong., 2d Sess. Pt. 1, at 17 (1986).

2. On June 4, 1990, petitioner, the administratrix of the estate of Crystal Renee Miller, filed a claim for compensation under the Vaccine Act. Petitioner alleged that her daughter suffered a hypotonic-hyporesponsive shock collapse within 24 hours of the administration of her first diphtheria-pertussis-tetanus vaccination. The case was assigned to Special Master Elizabeth Wright,

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[2] The Vaccine Rules were recommended by the Office of Special Masters and promulgated by the Claims Court. See 42 U.S.C. 300aa-12(d)(2) (Supp. III 1991). They are published at Appendix J to the Rules of the United States Claims Court.

who held an evidentiary hearing on the issue of entitlement to compensation. During the proceedings, the special master issued several suspensions in the case pursuant to 42 U.S.C. 300aa-12(d)(3)(C) (Supp. III 1991) and Vaccine Rule 9.[3] Pet. App. 6a. These suspensions extended the statutory time period in which the special master was required to reach a decision. 42 U.S.C. 300aa-12(d)(3)(A)(ii) (Supp. III 1991).

On June 7, 1991, the special master entered a decision denying compensation for Crystal Miller's death. The special master determined that petitioner had failed to prove by a prepondance of the evidence that Crystal's death resulted from a hypotonic-hyporesponsive collapse and, therefore, had failed to prove entitlement to compensation. Pet. 4. By statute, petitioner's appeal to the Claims Court was due on or before July 8, 1991. Petitioner failed to file a motion for review within the requisite 30-day time period: her motion was not received by the clerk until July 9, 1991, one day after the expiration of that period. As a result, petitioner's motion for review was returned as untimely, and final judgment was entered on July 9, 1991. Pet. App. 6a, 40a.

Petitioner then submitted a motion for "reconsideration" of the clerk's entry of judgment, urging that the judgment be vacated.[4] On November 21, 1991, the Claims Court granted petitioner's motion. Pet. App. 36a-49a. The court rejected petitioner's argument that Claims Court Rule (RUSCC) 6, which provides for a three-day extension for filing where service of a paper is by mail, extended petitioner's deadline to file her motion for re-

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[3] The relevant portions of Vaccine Rule 9 may be found in Pet. App. 7a n.3.

[4] As the Claims Court noted, "[n]owhere in her motion d[id] petitioner cite to any court rule, statute, or case law supporting an entitlement to 'reconsideration' on these facts." Pet. App. 38a. Nonetheless, the court went on to consider petitioner's motion.

view. The court concluded that the issuance of a decision is "not a method of service of a paper," as contemplated by the rules. Pet. App. 48a. Nonetheless, the court determined that a 14-day suspension entered by the special master prior to the June 7, 1991, filing of her opinion tolled the issuance date of that decision until June 20, 1991, when the suspension expired, and that petitioner's July 9, 1991, motion for review therefore was timely filed. *Id.* at 44a-46a. Alternatively, the court determined that "the spirit and purpose of the Vaccine Act" entitled petitioner to relief from judgment under RUSCC 60(b). Pet. App. 46a-48a. Accordingly, the court vacated the entry of judgment and allowed petitioner to file her motion for review out of time. *Id.* at 49a. Subsequently, the Claims Court reversed the special master's decision on the merits and ordered entry of judgment for petitioner. *Widdoss* v. *Secretary of Health & Human Services*, 25 Cl. Ct. 251 (1992). On the Secretary's appeal, the court of appeals held that the Claims Court exceeded its authority by entertaining petitioner's motion for review filed after the 30-day filing period.[5]

The court reasoned that the Claims Court erred in concluding that the suspension entered by the special master "froze all proceedings during th[e] entire [suspension] period to the end that no steps could be lawfully taken during the pendency of the suspension." Pet. App. 9a (emphasis omitted). In the court's view, the text of the Act, its legislative history, and implementing rules demonstrate that "periods of suspension serve only to enlarge the legally available time period in which to render a decision." *Ibid.* Accordingly, the court con-

[5] The court of appeals accordingly did not reach the merits of petitioner's claim. The Federal Circuit has, however, since decided the substantive issue underlying petitioner's claim in favor of the government. *Hellebrand* v. *Secretary of Health & Human Services*, No. 92-5068 (July 23, 1993).

cluded that the special master's decision in this case was "effectively 'issued' on the date it actually issued," *id.* at 11a, and that any other construction would be "contrary to the legislative history's premium on rapid resolution of petitions for compensation and on avoidance of unnecessary delays within the statutory framework." *Id.* at 10a.

The court of appeals further held that the 30-day filing period is jurisdictional and that the Claims Court erred in ruling that relief under RUSCC 60(b) was available in the absence of a timely motion for review. The court explained that Congress specifically used the term "jurisdiction" in order to "illustrate in the strongest possible terms that filing a motion to review the special master's decision within the 30-day period is a prerequisite to the Claims Court's jurisdiction." Pet. App. 12a. With respect to Rule 60(b) relief, the court concluded that the "authority conferred upon a court to make rules of procedure for the exercise of its jurisdiction is not an authority to enlarge its jurisdiction." *Id.* at 15a. In any event, the court continued, Rule 60(b) relief could not be used to "toll, extend, or waive the time period in which to appeal."[6] Pet. App. 16a.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. No important question of federal law

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[6] Circuit Judge Newman disagreed with the majority's conclusion that the 30-day filing period is "jurisdictional." Pet. App. 18a-21a. Nonetheless, she agreed with the majority that an "untimely filing can not be overcome under Rule 60(b)," and that the Claims Court impermissibly relied upon the "interest of justice" to permit petitioner to file her motion for review in the instant case. *Id.* at 18a.

has been raised, and further review therefore is not warranted.

1. The provisions governing appellate review by the Claims Court of a special master's final decision are unambiguous: A party has 30 days within which to file a motion for review, and only upon such a filing does the Claims Court have jurisdiction. 42 U.S.C. 300aa-12(e)(1) and (2) (Supp. III 1991); see also Vaccine Rule 23, *quoted at* Pet. App. 12a. Where, as here, no motion for review is filed within the 30-day period, the statute is equally specific: The clerk of the Claims Court shall immediately enter judgment in accordance with the special master's decision. 42 U.S.C. 300aa-12(e)(3) (Supp. III 1991). In the instant case, no motion was filed within the 30-day period and the clerk abided by the statutory mandate in entering judgment.

2. Despite the plain statutory language, petitioner contends that the 14-day suspension issued by the special master on June 6, 1991, tolled the effective date of the decision "issued" by the special master on June 7, 1991, and thereby tolled the running of the 30-day filing time.[7] See Pet. 10-11, 13-15. The court of appeals correctly rejected that contention.

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[7] Petitioner also claims that because (according to her calculations) the June 6, 1991, 14-day suspension was entered beyond the 240-day time limit for issuing a decision, the subsequent judgment was "void or voidable." See Pet. 19. Petitioner failed to raise that argument before the Claims Court, and did not mention it in the court of appeals until oral argument. In any event, in computing the operative suspension dates, petitioner erroneously treats two suspensions as having run concurrently with one another. See Pet. App. 50a. The order in question, issued May 22, 1991, specifically stated that the seven-day suspension was to begin at the end of the suspension period then in effect. As a result, the special master's subsequent suspension and decision were unquestionably entered within the applicable 240-day period, as extended.

As the court of appeals pointed out, the legislative history explains that the Act

> [permits] a suspension of time during the proceedings that is not to count in the aggregate time [of 240 days] allowed for compensation actions to proceed. . . . *If* the [special] master determines that *further time is necessary for the action on the petition to proceed*, the [special] master is . . . authorized to allow . . . suspensions, [with] the aggregate [suspension] period not [*sic*] to exceed 150 days in total.

Pet. App. 4a-5a, quoting H.R. Conf. Rep. No. 386, *supra*, at 516 (emphasis added by court of appeals); see also Vaccine Rule 9(c) (effect of suspensions is to toll 240-day time period). The Act was subsequently amended to permit the chief special master to suspend proceedings in certain cases for an additional 540 days upon his own initiative, if he determined that "the number of filings and resultant workload place an undue burden on the parties or the special master involved in [the] proceedings." 42 U.S.C. 300aa-12(d)(3)(D) (Supp. III 1991). "Neither of these suspension provisions," the court of appeals concluded, "was intended to contravene the Vaccine Act's desire to resolve petitions rapidly;" they instead resulted from a recognition that special masters assigned to "hear individual cases may become so overburdened with the enormity of the caseload that they would be unable to deal properly with each case." Pet. App. 5a.

As the court of appeals also pointed out, it is "unquestionable" that a special master has the ability to "consider the evidence, decide the case, and prepare her opinion for issuance during periods of suspension." Pet. App. 10a. Periods of suspension "serve only to enlarge the legally available time period [of 240 days] in which to render a decision on a petition," and the Claims Court therefore incorrectly concluded that "no steps could be

lawfully taken [to issue a decision] during the pendency of the suspension." *Id.* at 9a (emphasis omitted). The Claims Court's construction yields a result "contrary to the legislative history's premium on rapid resolution of petitions for compensation and on avoidance of unnecessary delays within the statutory framework."[8] *Id.* at 10a.

3. Alternatively, petitioner maintains (Pet. 7-9, 11-13) that she was entitled to post-judgment relief under RUSCC 60(b). Although her precise theory is not entirely clear, petitioner's argument suggests an invocation of the doctrine of equitable tolling. That argument fails on two grounds.

a. First, Congress intended the appeal time at issue here to serve as a jurisdictional cutoff.[9] The Section

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[8] Petitioner also argues (Pet. 15-16) that her motion was timely filed given the three-day extension applicable to papers served by mail upon a party. That narrow issue involving the Claims Court's rules does not raise an important question of federal law warranting review by this Court. Moreover, as the Claims Court observed, "the issuance of a decision by the special master * * * is not a method of service." Pet. App. 48a. The cited rule covers service of papers by a party; court-generated documents are not "serv[ed]," as that term is used in RUSCC 6.

[9] It is true that this Court has held certain statutory time limitations for filing suit in federal court to be subject to equitable tolling, even in cases against the government. *Irwin* v. *Department of Veterans Affairs*, 498 U.S. 89, 95-96 (1990); *Bowen* v. *City of New York*, 476 U.S. 467, 478-482 (1986). The time period at issue here differs. It is less like a statute of limitations for bringing suit in the first place and more like the period for filing a notice of appeal to the court of appeals or petition for a writ of certiorari in this Court in a civil case. Such periods have been considered jurisdictional, and not subject to equitable tolling. See *Torres* v. *Oakland Scavenger Co.*, 487 U.S. 312, 315-318 (1988); *Department of Banking* v. *Pink*, 317 U.S. 264, 268 (1942) (per curiam); Fed. R. App. P. 26(b) (court of appeals may not extend time for filing a notice of appeal); Sup. Ct. R. 13.3 ("The Clerk will refuse to receive

governing appeal from a special master's decision is entitled "Court jurisdiction." It states that the Claims Court has jurisdiction only upon the filing of a motion within 30 days, and provides that in the absence of such a motion, the clerk shall immediately enter judgment. 42 U.S.C. 300aa-12(e) (Supp. III 1991). Vaccine Rule 23 reinforces the statutory directive by providing that "[n]o extensions of time under this rule will be permitted, and the failure of a party to timely file such a motion shall constitute a waiver of the right to obtain review." The court of appeals correctly held that the Claims Court judge's grant of Rule 60(b) relief was inconsistent with these provisions of the Act and implementing rule.[10]

b. In any event, whether 42 U.S.C. 300aa-12(e) (Supp. III 1991) is considered jurisdictional, or whether it is deemed a period of limitation, the court of appeals correctly found no basis here for relief under RUSCC 60(b). Contrary to petitioner's suggestion, the standard for determining whether the 30-day period could be tolled is not whether Rule 60(b) relief was "in accordance with the spirit and purpose of the Vaccine Act." Pet. 8. Neither is the "absence of prejudice * * * an independent basis for invoking" equitable tolling. *Baldwin County Welcome Center* v. *Brown*, 466 U.S. 147, 152 (1984) (per curiam). Instead, "[f]ederal courts have typically extended equitable relief only sparingly." *Irwin*, 498 U.S. at 96. This Court has applied tolling in situations, for instance, in which a claimant filed a defective pleading during the statutory period, or was "induced or tricked

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any petition for a writ of certiorari which is jurisdictionally out of time.").

[10] The Claims Court's grant of equitable relief also fails to conform to that court's more limited authority as an Article I tribunal. As opposed to an Article III court, an Article I tribunal has no reservoir of general equitable powers. See *Bowen* v. *Massachusetts*, 487 U.S. 879, 905-907 (1988).

by his adversary's misconduct into allowing the filing deadline to pass." *Ibid.* This Court has concluded that equitable tolling does not extend to what is "at best a garden variety claim of excusable neglect," *ibid.*, or to a limitation that is "clearly to serve as a cutoff." *Lampf, Pleva, Lipkind, Prupis & Petigrow* v. *Gilbertson*, 111 S. Ct. 2773, 2782 (1991).

The circumstances presented here in no way warrant application of the tolling doctrine. There was no "confusion," as petitioner alleges, regarding the deadline for filing a motion for review. Pet. 9. In fact, petitioner never alleged to the Claims Court that she *actually* believed her appeal was due on any day other than July 8, 1991.[11] In this Court, she submits that she exercised due diligence in attempting to file her motion for review in a timely fashion because she mailed it on July 3, 1991—five days before July 8, 1991. However, mere assertions of diligent efforts are insufficient to call for the application of equitable tolling, see *Baldwin*, 466 U.S. at 151—especially in a suit against the government for monetary relief.

In the final analysis, no special equities favored extending the period for petitioner. The Act is clear that a party must file any motion for review within 30 days of issuance of the special master's decision. The rules are clear that no extensions of time may be given and that any party who fails to file within 30 days waives the right to review. A litigant uses first class mail in such

[11] During the course of these proceedings, petitioner has offered a laundry list of theories explaining how she could have reasonably relied on a number of different filing deadlines. These have included 30 days from the date of receipt (July 11, 1991), 30 days plus three days from "service" (July 10, 1991), or 30 days from the conclusion of the suspension time (July 21, 1991). Petitioner never maintained, nor did the Claims Court ever find, that she *in fact* relied on any one of those rationales.

circumstances at her peril. The date petitioner's time began to run was "published for all to see," plainly indicated in the first page of the special master's decision. *Pittston Coal Group* v. *Sebben*, 488 U.S. 105, 123 (1988). Under these circumstances, "[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants." *Baldwin*, 466 U.S. at 152.

4. Finally, petitioner's due process objection—raised for the first time in her petition for rehearing to the court of appeals—is wholly without merit. Pet. 17-18. Petitioner has no property interest in the expectation that she will receive an award in the Vaccine Program. See, *e.g.*, *Board of Regents* v. *Roth*, 408 U.S. 564, 576-578 (1972) (procedural protection of property is a safeguard of the interests that a person "has already acquired in specific benefits"; person must have more than a "unilateral expectation" of an interest in property); accord *Lyng* v. *Payne*, 476 U.S. 926, 942 (1986) ("[w]e have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment"). Even assuming that petitioner had some protectible property interest, however, she has made no showing that she did not receive the process that was "due." Notice of the time-frames applicable for reviewing a special master's decision was clearly enunciated by statute and rule.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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